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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,765

05/15/2006

Daniel Wigdor

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7397

20306

7590

05/21/2009

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EXAMINER

WALSH, DANIEL I

ART UNIT

PAPER NUMBER

2887

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,765	Applicant(s) WIGDOR, DANIEL	
	Examiner DANIEL WALSH	Art Unit 2887	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-24 is/are rejected.
- 7) ☒ Claim(s) 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-12-09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 18-23, 25, and 27 are objected to because of the following informalities:

Re claim 18: Replace all instances of “tilt” with – mobile phone tilt – and replace all instances of “tilt state” with – tilt state of the mobile phone --.

Re claim 19: Replace “tilt state” with – tilt state of the mobile phone --.

Re claim 20: Replace “tilt” with – mobile phone tilt –

Re claim 21: Replace “tilt” with – mobile phone tilt –

Re claim 22: Replace “tilt” with – mobile phone tilt –

Re claim 23: Replace “tilt” with – mobile phone tilt –

Re claim 25: Replace “tilt” with – mobile phone tilt –

Re claim 27: Replace “tilt” with – mobile phone tilt –

Appropriate correction is requested.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 18-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34- 39 of copending Application No.

11944284. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current application is a broader recitation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

For example, claim 18 of the current application recites: "...sampling tilt along two axes...sample stack... first button... tilt state... first threshold... second threshold... third threshold... fourth threshold...", whereas claim 34 of the '284 Application recites: "sampling tilt along two axes... sample stack... first button... tilt state... first threshold... second threshold... third threshold...fourth threshold...".

Claims 19-23 of the current application recite, respectively, : " ... fifth threshold ...", "... lower case ...", "... microprocessor ...", "... acceleration ...", "... digital camera ...", "... left side ...", and wherein in the '284 Application, claims 35- 39 recite, respectively, : " ... fifth threshold ...", "... lower case ...", "... microprocessor ...", "... acceleration ...", "... digital camera ...", "... left side ...".

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Re claim 24, though silent to the mobile phone structure, the Examiner notes that the claimed lactations are conventional in the art for a mobile phone layout, and therefore are an obvious expedient for ease of use and acceptance.

Allowable Subject Matter

3. Claims 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. The reasons for allowance have been discussed in the previous Office Action.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (See US 7389591 where the Examiner notes that Jaiswal et al. appears to teach the claim limitations, including an equivalent means to the sample stack, as Jaiswal et al. teaches that the processor tilt sensor and memory communicate to determine a common neutral position based on the average position of the device 500 whenever the control is ordinarily selected, which is interpreted as using past samples (in memory) to average to determine tilt state. Jaiswal et al. teaches moving the phone after button pressing to select characters, numbers, case, as claimed, but Jaiswal et al. does not constitute prior art due to its effective date.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL WALSH whose telephone number is (571)272-2409.

The examiner can normally be reached on M-F 9am-7pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Paik can be reached on 571-272-2404. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIEL WALSH/
Primary Examiner, Art Unit 2887